CITY OF DANBURY

OFFICE OF THE CORPORATION COUNSEL

155 DEER HILL AVENUE
DANBURY, CONNECTICUT 06810
(203) 797-4518 * FAX (203) 796-8043

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MEMORANDUM

FROM:	Daniel E. Casagrande, Esq., Assistant Corporation Counsel
TO:	City of Danbury Zoning Commission
DATE:	November 8, 2021
RE:	Pacific House – Text Amendment Application and Spot Zoning

I. Factual Background

The applicant, 3 Lake Avenue Extension, LLC and its managing member, Pacific House (collectively "Pacific House"), filed an application for text amendments (the "text amendment") to the CA-80 Arterial Commercial Zone ("CA-80 Zone") regulations to allow a transitional housing shelter as a special exception use. A public hearing on the application was conducted on September 28, 2021. During the hearing, the Zoning Commission requested further information from this Office as to whether Pacific House's application may constitute spot zoning.

II. Spot Zoning Under Connecticut Law

Connecticut courts have defined spot zoning as "the reclassification of a small area of land in such a manner as to disturb the tenor of the surrounding neighborhood." Gaida v. Planning & Zoning Commission, 108 Conn. App. 19, 32, 947 A.2d 361 (2008). Spot zoning is impermissible in Connecticut. Campion v. Board of Aldermen, 85 Conn. App. 820, 849-50, 859 A.2d. 586 (2004), rev'd on other grounds, 278 Conn. 500, 899 A.2d 542 (2006). "'Spot zoning,' … if permitted, must often involve unfair and unreasonable discrimination and necessarily defeat, in large measure, the beneficial results of zoning regulation." Delaney v. Zoning Board of Appeals, 134 Conn. 240, 245, 56 A.2d 647 (1947).

"Two elements must be satisfied before spot zoning can be said to exist. First, the zone change must concern a small area of land. Second, the change must be out of harmony with the comprehensive plan for zoning adopted to serve the needs of the community as a whole." Gaida v. Planning & Zoning Commission, 108 Conn. App. at 32; Blaker v. Planning & Zoning Commission, 212 Conn. 471, 483, 562 A.2d 1093 (1989).

Robert J. Yamin
Corporation Counsel
r.yamin@danbury-ct.gov

Laszlo L. Pinter
Managing Attorney and
Deputy Corporation Counsel
l.pinter@danbury-ct.gov

Robin L. Edwards
Assistant Corporation Counsel
r.edwards@danbury-ct.gov

Dianne E. Rosemark
Assistant Corporation Counsel
d.rosemark@danbury-ct.gov

Connecticut courts have not provided definitive parameters regarding what constitutes a "small area of land" in the context of spot zoning. "There is little authority that is helpful in determining whether a particular zone change concerns a 'small' area of land." Fedus v. Zoning & Planning Commission, Superior Court, judicial district of New London, Docket No. 124066 (May 16, 2003, Purtill, J.T.R.). A survey of the case law reveals that this determination is case-specific and involves a comparison of the size of the property at issue with the size of the affected zoning district.

The comprehensive plan, which consists of the zoning regulations and the zoning map, has been defined as a general plan to control and direct the use and development of property in a municipality, or a large part thereof, by dividing it into districts according to the present and potential use of property. Konigsberg v. Board of Aldermen, 283 Conn. 553, 584-85, 930 A.2d 1 (2007). The requirement of adhering to a comprehensive plan is generally satisfied when a zoning authority acts with the intention of promoting the best interest of the community. First Hartford Realty Corp. v. Planning & Zoning Commission, 165 Conn. 533, 541 (1973); Dutko v. Planning & Zoning Board, 110 Conn. App. 228, 241, 954 A.2d 866 (2008). "The vice of spot zoning lies in the fact that it singles out for special treatment a lot or a small area in a way that does not further such a [comprehensive] plan." Konigsberg v. Board of Aldermen of City of New Haven, 283 Conn. 553, 592, 930 A.2d 1 (2007). However, merely because a change of zoning classification involves a small area of land, and the new classification differs from that of the immediate area, does not mean that a claim of spot zoning will necessarily prevail. Pierrepont v. Zoning Commission, 154 Conn. 463, 468 (1967); Kutcher v. Town Planning Commission, 138 Conn. 705, 710 (1952). "Where a zoning authority, in its collective reasons, indicates that the change in zoning classification is designed to accommodate the needs of the community, and the general plan of zoning, it will survive a claim of spot zoning, and will be found consistent with the comprehensive plan." Michael v. Planning & Zoning Commission, 28 Conn. App. 314, 319-20, 612 A.2d 778 (1992). A reviewing court accords substantial defiance to whether a zone change comports with the town's comprehensive zoning plan. Michel v. Planning & Zoning Comm'n, 28 Conn. App. 314.

Although Connecticut courts in earlier decisions occasionally found spot zoning, it is widely recognized that "[t]he spot zoning concept has become obsolete because the size of the parcel involved in a zone change is immaterial if the commission's action meets the two-part test for a zone change: (1) the zone change is in accordance with the comprehensive plan, and (2) it is reasonably related to the normal police power purposes in General Statutes 8-2." R. Fuller, 9 *Connecticut Practice Series: Land Use Law and Practice* (4th Ed. 2015) § 4:8.

One Commission member pointed out at the first hearing session that the text amendment would permit a transitional shelter on only the subject property and two other properties in the CA-80 zone, and asks us to opine on whether this is significant in the spot zoning analysis. The answer is no. To be sure, earlier court decisions referred to above found that spot zoning exists when the zoning authority acts in a way "which gives to a single lot or a small area privileges which are not extended to other land in the vicinity…. " See Bartram v. Zoning Comm'n, 136

Robert J. Yamin
Corporation Counsel
r.yamin@danbury-ct.gov

Laszlo L. Pinter
Managing Attorney and
Deputy Corporation Counsel
l.pinter@danbury-ct.gov

Robin L. Edwards
Assistant Corporation Counsel
r.edwards@danbury-ct.gov

Dianne E. Rosemark
Assistant Corporation Counsel
d.rosemark@danbury-ct.gov

Conn. 89, 93 (1949). As Judge Fuller observes in his treatise on land use law, however, the concept of spot zoning in Connecticut has "gradually evolved" to encompass the two-part test discussed above. R. Fuller, 9 Connecticut Practice Series: Land Use Law and Practice § 4:8. Stated another way, the modern approach is that a court will not strike down a zone change involving a small parcel even when the change does not apply to other land in the particular zoning district, as long as the zoning commission determines that the change will further the comprehensive plan – i.e., is in the public interest. Id.; see Michel v. Planning & Zoning Comm'n, 28 Conn. App. 314 (1992).

III. Pacific House Application & Spot Zoning Potential

This Office respectfully directs the Zoning Commission to the report prepared by Sharon B. Calitro, Planning Director. Director Calitro's report finds that the text amendment offers significant public benefits and is consistent with the Plan of Conservation and Development's recommendation to expand the City's affordable housing inventory. Director's Memo, Sept. 9, 2021, at 2; 3. The Commission may reasonably credit Director Calitro's report, as well as other evidence in the record, in determining whether the text amendment serves a public benefit, advances the public health, safety and welfare, and furthers the City's comprehensive plan.

IV. Conclusion

In closing, it is important to note that while a reviewing court would likely find that the text amendment does not support a spot zoning challenge, that does not end the matter for the Commission. The Commission must weigh the entire record, including the evidence submitted by the petitioner, opponents and other public speakers to determine, in the final analysis, whether the text amendment will further the comprehensive plan and promote the public health, safety and welfare. In this Office's opinion, the Commission's exercise of its legislative discretion to either adopt or deny the proposed amendment is unlikely to be disturbed by a reviewing court in any appeal from the Commission's decision.